



Crl.O.P.No.21401 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.06.2024

Pronounced on :11.06.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21401 of 2022

and

Crl.M.P.No.13929 of 2022

1.Thahira Bhivi

2.Julaka Bhivi

.. Petitioners/A2 and A3

/versus/

1.The Inspector of Police,
Kottakuppam Police Station,
Villupuram District.

.. Respondent/
Complainant

2.Madina Beham

.. Respondent/Defacto
Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records on the file of Judicial Magistrate, Vanur, in P.R.C.No.26 of 2019 and quash the same.

For Petitioner :Mr.V.V.Sairam

For Respondents :Mr.K.M.D. Muhilan
Govt.Advocate (Crl.Side) for R1
Mr.M.Prakash for R2



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ORDER

The petitioners herein are mother and daughter. They are the second and third accused in the criminal case P.R.C.No.26 of 2019 pending before the Judicial Magistrate, Vanur, Villupuram District. They both are charged for offences punishable under Sections 452, 498 A, 323,355 and 306 I.P.C. in connection with the suicidal death of one Shameen Munisha the paramour of Mohammed Mansour, who is the first accused in this case.

2. The case of the prosecution, based on the evidence collected is, that the deceased Shameed Munisha a married lady living as a paramour to Mohammed Mansour for more than 5 years, after her husband left to abroad. She had two children born through her husband and a female baby through her paramour. On 07/11/2007 at about 18.00 hours, she committed suicide by hanging in the house, where she was living with Mohammed Mansour. On the complaint given by the mother of the deceased, FIR came to be registered on the same day at 23.30 hrs naming Mohammed Mansour as first accused, his mother the first



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petitioner and his sister the second petitioner as second and third accused respectively.

3. The overt act attributed against them to attract prosecution was that the first accused often used to come home in drunken state and torture the deceased to desert her two children born through her husband and also to sell the properties in her name and give the proceeds. Mohammed Mansour along with his mother and sister used to pressurise her to part away the money. Unbearable of the torture, the deceased sold one of her two properties and gave the sale proceeds to the first accused who in turn given it to the third accused, his sister for constructing a house. The deceased refused to part away the other property and also started demanding back her money. Infuriated by this, all the three accused began to leach violence on the deceased. Five days prior to her suicide, she called her brother Azeez and informed about the cruelty she is facing.



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4. On the date of occurrence, at about 6.00 p.m., the deceased been subjected to physical violence and she was told to die only then the first accused can live peacefully. This has been witnessed by the minor son of the deceased Mohamed Yuvaiz, aged 11 years. Soon thereafter, the deceased had attempted to call her brother over phone. Her brother could not respond to the call. Then, she had gone to the room, locked and got herself hanged in the ceiling fan. When the teen-aged daughter of the deceased returned home from the school at 6.30 p.m, she was informed about the occurrence by her brother Mohammed Yuvaiz. Soon after, the brother and the mother of the deceased were informed.

5. The respondent police, on receiving the complaint from the mother of the deceased, set the law into motion. On completion of investigation, final report filed and further proceedings yet to commence. At this stage, the petition to quash the case is filed by the second and third accused on the ground that even assuming the prosecution version is true and these two petitioners were present in the house of the deceased and uttered the words “go and die“ such utterance will not attract offence



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under Section 306 IPC in the light of the judgments rendered by the Courts. Between the alleged utterance and the death, there was plenty of time to contemplate the pros and cons of the decision. The deceased in fact had called her brother before taking the decision to commit suicide. The intervening event had severed the proximity between the alleged cause and the effect. The Courts have held that ordinary words uttered by the family members in the spur of verbal exchange, same cannot be construed as abetment to commit suicide, if a hyper-sensitive woman decides to end her life. In the absence of mensrea, the petitioners cannot be forced to face the ordeal of criminal trial.

6. The learned counsel appearing for the petitioners also strenuously argued that admittedly, these two petitioners were not residing with the first accused and the deceased. They are residing elsewhere. In fact, the second petitioner is living in Pondicherry along with her husband and children and she had not received any money either from the deceased or from the first accused. Neither she demanded any money from the deceased or pressurised the deceased to part away her



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property. The ingredients to attract the offence under Section 498 A IPC or Section 306 IPC is totally absent. The post mortem report does not show any other external injury other than the injuries around the neck which are sign of suicide by hanging. Therefore, the case against these two petitioners is liable to be quashed following the dictum laid by the Hon'ble Supreme Court in ***Prahaladdas –vs- State of UP and others [1995 SCC (Cri) 943]***.

7. The learned counsel appearing for the petitioners also relied upon the following judgments ,to buttress his submission in support of the quash petition.

(i)S.Murugesan and others –vs- State, Rep. by the
Inspector of Police:[2021 (1) MWN (Cri) 598.]

(ii)Mala @ Manimala –vs- State, Rep. by the
Inspector of Police:[2021 (2) MWN (Cri) 610.]

8. The Learned Government Advocate (Criminal Side) per contra submitted that the facts of the case does not fall within the scope of the cases cited. The evidence collected during the investigation reveals that the deceased and the first accused been living as husband and wife



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for more than five years. The deceased has given birth to a female child and at the time of her death, the child was about 3 years old. Apart from this child, the deceased had a daughter aged about 16 years and a son aged about 11 years, both born to her first partner-wedded husband. Five days prior to the incident, the deceased had told her brother about the cruelty and demand of money by the accused persons. On the date of the incident after being attacked by the petitioners, she has tried to contact her brother but in vein. The incident of attack, abuse and utterance of inciting words been witnessed by the minor son of the deceased. The attempt to call her brother cannot be an intervening factor to hold that the proximity between the utterance and the death had severed.

9. Before examination of witnesses, the statements of the witnesses can be appreciated only on the face of it. The intention to utter the instigating words, is to stop the deceased from nagging them to return the money and that fact is apparent from the nature of the words uttered.

(நீ செத்தா தான் நாங்க நிம்மதியா இருக்க முடியும்....). The judgments relied by the petitioners are based on the facts and circumstances of those



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cases. They are not similar to the case under consideration. Therefore, pleaded that the petitioners have to face trial and prosecution has to reach its logical end.

10. Heard both sides. The submissions of the Learned counsels examined in the light of the judgments cited.

11. This is a case of a lady, who had committed suicide leaving behind three children. Her paramour, who sired the third child, his mother and sister are suspected to have caused cruelty both mentally and physically besides abetted her to commit suicide. They are alleged to have uttered to her, “only if she dies, they all will be peaceful” . These words alleged to have been uttered not in the ordinary course of wordy quarrel and violent attack with broom stick and wooden log. The words uttered discloses the reason for attack The words prima facie is meant to force the deceased to commit suicide. The act of violence and instigation been witnessed by the minor son of the deceased. The prosecution rely upon the statement of the minor boy, who is an eye witness. There are other



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circumstantial evidences collected, which are prima facie sufficient to frame charges of the alleged offences. If those evidence stand the test of judicial scrutiny, the same may lead to conviction.

12. In respect of the citations relied, in criminal prosecution, no two cases will be identical or prototype. Likewise, appreciation of the statement of witnesses is different from the appreciation of testimony of a witness at the end of the trial. Each case has to be tested based on the facts and evidence collected. From the records, this Court finds, there is sufficient material to proceed against the suspected accused. There is no indication from the materials relied by the prosecution in this case to suspect that the deceased was a hyper sensitive lady or the instigating words were uttered only in spur of quarrel but not with mens-rea. Contrarily, it prima facie appears that they were uttered with intention and purpose. The petitioners had come to the house of deceased with a mission. There is eye witness to the events, which has taken place soon before the death.

13. In *S.S.Chheena vs. Vijay Kumar Mahajan and another*



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reported in **[(2010)12 SCC 190]**, a two Judge Bench of the Supreme Court, observed:

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

14. In the present case under consideration, we find positive act on the part of the petitioners both physically and verbally to instigate the commission of suicide.

15. In ***Ude Singh and Ors. vs State of Haryana*** reported in **[(2019) 17 SCC 301]**, the Hon’ble Supreme Court has expounded on the ingredients of Section 306 of the IPC, and the factors to be considered in determining, whether a case falls within the ken of the aforesaid



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provision, in the following terms:

“In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.”

16. Thus, it is clear that essentially, the facts and circumstances of each case decides whether the offence under Section 498 A or 306 IPC is made out or not. The adequacy of the act and utterance to abet the commission of suicide, the intention or *mens rea* for such utterance, the proximity between the act and the suicide are all based on the facts which



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has to be tested through the witnesses and other circumstantial evidence.

When the evidence gathered during the course of investigation had provided material sufficient to frame charges, pretrial testing of the credibility of the statements of the witnesses is not warranted.

17. Therefore, this Court holds that on the facts and circumstances, this is not a fit case for pre-trial quash. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

11.06.2024

Index:yes

Neutral Citation:yes/no

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To

1.The Judicial Magistrate, Vanur.

2.The Inspector of Police, Kottakuppam Police Station ,Villupuram District.

3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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and
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